

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 99-266

September 29, 1999

Vitts Network, Inc.  
Petition for Finding of Public  
Convenience and Necessity to  
Provide Service as a Local Exchange  
Carrier as a Reseller and as a  
Interexchange Telephone Utility

ORDER GRANTING AUTHORITY  
TO PROVIDE LOCAL EXCHANGE  
SERVICE AS A RESELLER, FACILITIES-  
BASED AND RESOLD INTEREXCHANGE  
SERVICES AND DEDICATED  
UNSWITCHED SERVICES; AND  
APPROVING SCHEDULE OF RATES,  
TERMS AND CONDITIONS

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WELCH, Chairman; NUGENT and DIAMOND, Commissioners

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In this Order, the Commission grants Vitts Network, Inc. (Vitts) the authority in the State of Maine to provide competitive local exchange service as a reseller, facilities-based and resold intrastate interexchange service, and dedicated services. We also approve the Company's Terms and Conditions and Rate Schedules. Finally, we exempt Vitts from the requirements of Chapter 210, *Uniform System of Accounts*, and of 35-A M.R.S.A. §§ 707 and 708, subject to the conditions described below.

**I. APPROVAL OF APPLICATION TO SERVE**

On April 16, 1999, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, Vitts filed a petition with the Commission requesting authority to provide "dedicated service as a competitive non-switched telecommunications carrier on a facilities and/or resale basis, for local and interexchange traffic, within the exchange service territories in which the incumbent local exchange carrier ("ILEC") is currently New England Telephone and Telegraph Company d/b/a Bell Atlantic-Maine ("Bell Atlantic-Maine").

On September 20, 1999, Vitts amended its petition, requesting that the Commission authorize it to:

Provide all competitive local and interexchange telecommunications services throughout the State of Maine for which authority is required, with the exception, at this time, of facilities-based, switched local exchange service (for which the assignment of NXX codes would be required). Included in the authority requested by Vitts is the authority to provide dedicated services on a facilities-based, UNE or resold basis, as described

in Vitts' original Application, the authority to provide local services on a switched (e.g. toll) and non-switched basis.

Vitts also states:

Vitts will inform the Commission of its switching arrangements, i.e. whether Vitts is using its own facilities or Vitts is reselling the services of another toll provider.

Before we grant approval under section 2102 for another public utility to provide service, 35-A M.R.S.A. § 2105 requires us to find that the public convenience and necessity require an additional utility to provide service in a location where another utility is already authorized to provide, or is providing, the same or similar service.

47 U.S.C. § 253(a), enacted by the Telecommunications Act of 1996, states:

(a) In General. No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunication service.

47 U.S.C. § 253(b) states, however:

(b) State Regulatory Authority. Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

We find that granting Vitts the authority to provide local exchange and interexchange services in Maine will not impede the preservation or advancement of the public interest goals or policies stated in section 253(b).

Vitts's application provides reasonable information indicating that its financial and management capabilities are adequate to provide local and interexchange services in Maine.

## **II. SERVICE TERRITORY**

### **A. Interexchange Service Authority**

Vitts has requested authority to provide both facilities-based and resold interexchange service throughout the state. We grant that authority, subject to the condition

that Vitts shall notify the Commission and all LECs from which it intends to purchase access when it commences facilities-based interexchange service.

**B. Local Service Authority**

Vitts has requested authority to provide local exchange service throughout the state. It states that it will offer service only as a reseller of local exchange service provided by other local exchange carriers (LECs) in that area. We define local resale as the offering of local exchange service purchased from another competitive local exchange carrier (CLEC) pursuant to 47 U.S.C. § 251(b)(1) or from an incumbent local exchange carrier (ILEC) at a wholesale discount pursuant to 47 U.S.C. § 251(c)(4). The purchase of unbundled network elements from an ILEC and their use in providing local exchange service is facilities-based service and is not resale. Vitts' authority to provide local exchange service is limited to resale unless it obtains further authorization from the Commission.

Vitts' proposed Terms and Conditions, which we approve today, also limit its local exchange service offerings to resold services. If Vitts wishes to expand the scope of its authority in the future to provide facilities-based switched local exchange services, it shall seek approval pursuant to 35-A M.R.S.A. § 2102, requesting the Commission to amend this Order. Vitts shall simultaneously file amended Terms and Conditions pursuant to 35-A M.R.S.A. § 307 that state its proposed revised service territory for facilities-based local exchange service. Vitts' proposed service territory for facilities-based local exchange service shall be limited to those areas in which it will be ready to provide facilities-based switched local exchange service within a reasonable period of time. The application shall include information establishing that readiness. It is not necessary for a CLEC with existing authority to present a full application in order to request additional service territory authority. The Commission will act expeditiously on any such application and revisions of Terms and Conditions.

**III. APPROVAL OF TERMS AND CONDITIONS AND RATE SCHEDULES**

We allow the terms and conditions proposed by Vitts to go into effect. Vitts did not use the Commission's standard terms and conditions that comply with Maine law and the Commission's Rules. We have reviewed the Company's petition, Terms and Conditions, and Rate Schedules, and they appear to comply with Maine law and the Commission's Rules. Nevertheless, if there is any conflict between a provision in Vitts' terms and conditions and the Commission's Rules or a statute, the rule or statute will control. Included in the Terms and Conditions is a provision stating that in the event of such a conflict, the statute or the Commission's Rule will control.

In general, the Commission believes that a competitive telecommunications market results in services and rates that benefit the public. We believe that the acceptability of

Vitts' services and rates in the market place provides an adequate test of the reasonableness of the Company's rates. Accordingly, we allow the rates proposed by Vitts to go into effect.

#### **IV. INTERCONNECTION AGREEMENT(S)**

In order to provide local exchange service, a CLEC must, as a practical matter, obtain an interconnection agreement with the ILEC(s) providing service in any area where it intends to provide service. In the absence of such an agreement, it will not be possible for Vitts' customers to call customers of the ILEC(s), and vice versa. Interconnection agreements are governed by 47 U.S.C. § 252, and must be approved by this Commission.

If a CLEC makes a bona fide request for an interconnection agreement with an ILEC that is a "rural telephone company" as defined in 47 U.S.C. § 153 (37), the "rural exemption" of 47 U.S.C. § 251 (f) will apply. All of Maine's independent incumbent local exchange carriers are "rural telephone companies." A rural telephone company is not required to negotiate an interconnection agreement or provide interconnection until after the Commission, pursuant to 47 U.S.C. § 251(f)(1)(B), finds that the requirement "is not unduly economically burdensome, is technically feasible, and is consistent with [the universal service provisions of] section 254 . . . ." Although the service territory for local exchange service as a reseller we grant today is statewide and Vitts' terms and conditions do not limit its service territory, as a practical matter it cannot offer local exchange service in the service territory of a rural ILEC until such time as that ILEC's rural exemption is terminated.

On June 3, 1999, in Docket No. 99-317, the Commission approved an agreement between Vitts and New England Telephone and Telegraph Company d/b/a Bell Atlantic-Maine pursuant to 47 U.S.C. § 252. As a condition of providing local exchange service, Vitts must comply with the terms of any interconnection agreements that it has reached with any ILECs and that have been approved by the Commission.

If Vitts executes an interconnect agreement(s) with other ILECs(s) it shall obtain approval of that agreement by this Commission.

#### **V. PAYMENT OF ACCESS CHARGES**

Our approval of Vitts' application to provide interexchange service in Maine is conditioned on the payment of access charges to local exchange carriers (LECs) who have on file with the Commission approved access charge rate schedules.

The Commission has granted authority to Vitts to provide services as either a facilities-based carrier or as a switchless reseller.<sup>1</sup> Access charges to local exchange carrier are not paid by switchless resellers, but are instead paid by an underlying facilities-based interexchange carrier. As a condition of granting authority to a switchless reseller to provide intrastate service in Maine, its underlying facilities-based carrier must also have a authority to provide intrastate service in Maine. Vitts states that it does not have immediate plans to provide any switched interexchange service and therefore does not have an underlying facilities-based interexchange carrier.

If Vitts begins to provide switched interexchange service, it shall notify the Commission whether it is providing resold or facilities-based service and, if resold, the identity of its authorized underlying carrier. If Vitts changes its underlying carrier, it shall notify the Commission as required by the ordering paragraphs. If Vitts begins to provide facilities-based interexchange service, it shall notify the Commission and all LECs from which it obtains access, as required by the ordering paragraphs.

## **VI. WAIVERS; REPORTING REQUIREMENTS**

As a condition of providing local exchange service, Vitts must comply with the terms of any applicable Commission orders or rules that may govern local interconnection and compensation for interconnection. Vitts shall also comply with any applicable Commission Rules or orders that govern universal service, public safety and welfare, service quality and consumer rights.

Pursuant to sections 11(A) and 12(A) of Chapter 280, which govern carriers' interexchange activities, Vitts is exempt from Chapter 210 of the Commission's Rules, which governs telephone utility accounting and annual financial reports, and from 35-A M.R.S.A. §§ 707 and 708, which govern approvals for reorganizations and contracts with affiliated interests. Vitts has requested waivers from all of these provisions for its local exchange and dedicated services. Because Vitts' rates and operations are likely to be subject to market forces, we do not see any present need to subject the Company to those requirements.

However, the Company must report its annual intrastate gross operating revenues, its revenues derived from sales to other carriers, and its annual intrastate minutes for use

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<sup>1</sup>We define a switchless reseller as any entity that does not own, lease, or control any switching facilities or private lines that it will use to provide telecommunication services in Maine. A reseller who owns a switch in another state, and plans to use that switch to switch or carry Maine traffic, is a switched reseller. A reseller who does not own facilities in Maine or any other state, or who owns facilities in another state but does not plan to use that switch to carry Maine traffic, is a switchless reseller.

for the purpose of determining its regulatory assessment.<sup>2</sup> If Vitts resells service to other switched or switchless telephone service providers, the Company must maintain its records so that it may separately identify those sales. Pursuant to Chapter 280, § 11(B), Vitts

shall maintain records sufficient to identify and to allow auditing of traffic volumes, intrastate interexchange billings for both retail and wholesale services, and all information that is necessary to calculate access or interconnection charges in accordance with this Chapter. Those records shall be maintained for a minimum of 2 calendar years.

The exemptions from the affiliated interest approval requirements of 35-A M.R.S.A. §§ 707 and 708 granted by Chapter 280, § 12(A) are subject to the notice requirements contained in Chapter 280, §§ 12(B) and (C) and in the ordering paragraphs below.

In addition, Vitts shall inform the Commission of any changes to its corporate structure and ownership and of any changes in the name under which it does business, as set forth in the ordering paragraphs below. If necessary, it shall also refile its rate schedules and terms and conditions to reflect its new identity.

## **VII. OTHER REQUIREMENTS**

Vitts shall comply with all applicable rules of the Commission and statutes of the State of Maine, including the customer notification rule described in the ordering paragraphs below.

## **VIII. ORDERING PARAGRAPHS**

Accordingly, we

1. Grant, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, the request of Vitts Network, Inc. to provide competitive local exchange telephone service as a reseller in the State of Maine, facilities-based and resold interexchange service in the State of Maine, and dedicated services.

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<sup>2</sup>The Commission mails the annual reporting forms to carriers in January of each year. The completed forms are due by April 1 of each year.

2. Exempt Vitts Network, Inc. from the requirements of Chapter 210 of the Commission's Rules, except that it must report the revenue and minutes of use information that is requested by the Commission, on or before April 1 of each year;

3. Exempt Vitts Network, Inc. from approval requirements of 35-A M.R.S.A. §§ 707 and 708, but Vitts shall provide notice to the Commission of any reorganization, as defined in 35-A M.R.S.A. § 707 (1)(A), that results in a merger, sale or transfer of a controlling interest of Vitts or of any entity that owns more than 50% of Vitts. The notice required by this subsection shall be filed within 10 days following any reorganization described herein, as required by Chapter 280, § 12(B). As required by Chapter 280, § 12(C), Vitts Network, Inc. shall also provide notice of any other changes in the name under which it does business (d/b/a), any change of the location of its business office, and any change of its contact person. Vitts Network, Inc. shall provide the Administrative Director of the Commission with notice of any of the changes described within 30 days following the change. If necessary, Vitts shall amend its rate schedules and terms and conditions to reflect any change in identity; and

4. Order that Vitts Network, Inc.'s proposed terms and conditions and rate schedules (pages 1-7 Original and page 8 Original (First Replacement)), attached to this Order, shall be effective on the date of this Order;

5. Order that Vitts Network, Inc. or an underlying facilities-based interexchange carrier authorized to provide intrastate interexchange service in Maine shall pay interexchange access charges as required by approved access tariffs filed by local exchange carriers. Vitts Network, Inc. shall notify the Commission when it commences any facilities-based or resold switched interexchange service and, if resold, shall state the identity of its underlying facilities-based carrier, which must be authorized to provide interexchange service in Maine. Vitts shall further provide the Commission with certification by the underlying carrier that it will pay access charges, except that certification is not required if the underlying carrier is AT&T, MCI WorldCom or Sprint. If Vitts changes its underlying facilities-based carrier, it shall provide the Commission with notice within 30 days following the change; the new carrier, if it is not AT&T, MCI WorldCom or Sprint, shall provide certification that it is paying access charges. Vitts Network, Inc. shall immediately inform the Commission and all local exchange carriers in the State of Maine from which Vitts will be purchasing access services if there is any change in its operations that will result in its carrying, switching, or any processing of any of its own traffic, at which time Vitts shall pay access charges to those local exchange carriers that have approved access charge schedules on file with the Commission; and

6. Order that Vitts Network, Inc. shall comply with all applicable rules of the Commission, including the requirement of Chapter 280 § 10 that interexchange carriers provide notice to all affected customers of an increase to any rate that is greater than 20% to all affected customers.

Dated at Augusta, Maine, this 29th day of September, 1999

BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR: Welch  
Diamond

COMMISSIONER ABSENT: Nugent



## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.